

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, )  
 ) Case No. 1:19-CR-00227  
 ) (LJV) (MJR)  
 Plaintiff, )  
 )  
 vs. ) April 29th, 2024  
 ) 2:40 p.m.  
 JOSEPH BONGIOVANNI, )  
 )  
 Defendant. )

**TRANSCRIPT OF ORAL ARGUMENT  
BEFORE THE HONORABLE LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

For the Plaintiff: TRINI E. ROSS, ESQ.  
UNITED STATES ATTORNEY  
BY: CASEY CHALBECK, ESQ.  
JOSEPH TRIPI, ESQ.  
ASSISTANT UNITED STATES ATTORNEYS  
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For the Defendant: PARKER ROY MACKAY, ESQ.  
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Williamsville, NY 14221

Court Reporter: MEGAN E. PELKA, RPR  
Robert H. Jackson US Courthouse  
2 Niagara Square  
Buffalo, NY 14202  
(716) 229-0880

1 THE CLERK: All rise.

2 THE COURT: Please be seated.

3 THE CLERK: 19-CR-227. United States v. Joseph  
4 Bongiovanni. Assistant United States Attorney Joseph Tripi  
5 and Casey Chalbeck and paralegal Karen Champoux appearing on  
6 behalf of the government. Attorneys Parker MacKay and Rob  
7 Singer appearing with defendant. Defendant is present. This  
8 is the date set for oral argument.

9 THE COURT: Okay. Good afternoon, everyone.

10 MR. TRIPI: Good afternoon, Your Honor.

11 THE COURT: So, I've read the government's papers.

12 They were submitted *ex parte*. I've read the defendant's  
13 response. Is there anything either side would like to add?

14 MR. TRIPI: No, Your Honor. Unless the defense has  
15 something, I'll defer to my papers.

16 THE COURT: Okay. So, go ahead.

17 MR. MACKAY: I don't think we need to add anything  
18 further, Judge. I'm not sure what we can really argue, again,  
19 without -- not knowing --

20 THE COURT: And I understand that. And, as you folks  
21 know, I like to proceed carefully and slowly in things like  
22 this. Here's what we're going to do. Based on the  
23 government's *ex parte* sealed submission, I believe that there  
24 are compelling state interests that justify the initial  
25 inquiry of this juror being conducted *ex parte*, but I'm going

1 to amend my initial order to require that any such inquiry be  
2 conducted *in camera* on the record in the presence of the  
3 Court.

4 After that inquiry, I will re-evaluate whether the balance  
5 of the parties' interests continues to justify the content of  
6 that inquiry remaining *ex parte*, and whether any further  
7 action is necessary, maybe that we're going to disclose it to  
8 the defense at that point, but I want to make sure that we  
9 take this one step at a time.

10 At this juncture, I think the balance of keeping the  
11 government's motion and the inquiry of the juror *ex parte* is  
12 necessary because of balancing everything. But that may  
13 change depending on what the inquiry reveals. And I want to  
14 make sure that the defense understands that I understand and I  
15 am weighing very carefully Mr. Bongiovanni's interests against  
16 the state interest the government has identified in its  
17 motion. I want to proceed carefully and one step at a time.  
18 I've done this before in this case and others, and that's what  
19 we're going to do here. Just do it one step at a time.

20 So, in my presence, we'll do it on the record. I don't  
21 know where; whether it will be in the courtroom, whether it  
22 will be in my chambers maybe, but we're going to do it one  
23 step at a time.

24 MR. TRIPI: And, Judge, just mechanically, if I may  
25 ask a clarifying question? Obviously, the juror doesn't know

1 that this is happening today. We have had no contact as of --  
2 in compliance with your stay order and all that. We -- what I  
3 envision doing after this appearance is ordering that  
4 transcript, making sure I have your order crystal clear. I  
5 just heard it, I know what you said, but do I have permission  
6 to at least have one of the trial team call the juror, explain  
7 what you just ordered? Because the jurors, they have not  
8 heard from us.

9 THE COURT: Yes. And nothing else.

10 MR. TRIPI: Explain what you just ordered and that we  
11 would need to arrange a date to have us conduct inquiry in the  
12 Court's presence. It would just be the -- at this stage, the  
13 government and the Court that would be conducting inquiry, is  
14 that accurate?

15 THE COURT: Yeah. I'm wondering if maybe we should  
16 reach out to the juror. Maybe Colleen should reach out to the  
17 juror.

18 MR. TRIPI: Okay.

19 THE COURT: I volunteer you for too many things.

20 THE CLERK: It's okay.

21 THE COURT: But I think it might be better to have  
22 Colleen reach out to the juror. You have his number, I  
23 believe?

24 THE CLERK: I do, Judge.

25 THE COURT: And she will schedule something. I'll

1 have Colleen coordinate with you, Mr. Tripi, for your schedule  
2 as well.

3 MR. TRIPI: Okay.

4 THE COURT: And then we'll schedule something.

5 MR. TRIPI: Somewhere in there, if you could just let  
6 the juror know we weren't ignoring him. That's all. I don't  
7 want the individual to believe we were ignoring him.

8 THE COURT: Of course not. No. And, again, we'll  
9 call him again and tell him that.

10 MR. TRIPI: Okay. Thank you.

11 THE COURT: Okay. And I think the defendant has  
12 preserved its record on this. I think we're proceeding the  
13 right way. I'm guided by the Second Circuit's decision in the  
14 Logan case citing 2 F.2d 654. I think that that suggests that  
15 this is the way something like this should be done, because  
16 there is a risk of talking to jurors. But, I think, if the  
17 Court is present, that risk goes down considerably, and I  
18 think that's why -- the way I'm leaning.

19 MR. TRIPI: Sounds good.

20 THE COURT: Anything else?

21 MR. TRIPI: No, Your Honor.

22 THE COURT: Anything else from the defense?

23 MR. MACKAY: No, Your Honor.

24 THE COURT: Okay. Thank you all very much.

25 MR. TRIPI: Thank you very much.

1 THE CLERK: All rise.

2 (Proceedings concluded at 2:46 p.m.)

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I certify that the foregoing is a  
correct transcription of the proceedings  
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Official Court Reporter